

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

LEVARGES LENARD BROWN,

Criminal No. 02-101 (JRT/FLN)

Civil No. 05-1428 (JRT)

Petitioner,

v.

**ORDER DENYING
§ 2255 PETITION**

UNITED STATES OF AMERICA,

Respondent.

Levarges Lenard Brown, #10349-041, Federal Correctional Institution Waseca, P.O. Box 1731, Waseca, MN 56093, petitioner *pro se*.

Andrew Dunne, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, for respondent.

Petitioner Levarges Lenard Brown pleaded guilty to possession with intent to distribute approximately 108 grams of cocaine base and was sentenced to 262 months imprisonment, five years of supervised release, and a \$100.00 special assessment. Brown's conviction and sentence were affirmed by the Eighth Circuit Court of Appeals on April 15, 2004. Brown did not petition the Supreme Court for a Writ of Certiorari. Brown timely filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, seeking relief under *Blakely v. Washington*, 124 S. Ct. 2531 (2004) and *United States v. Booker*, 125 S. Ct. 738 (2005). Brown did not raise the issues presented

in *Blakely* and *Booker* at his sentencing or in his direct appeal.¹ This Court and the Eighth Circuit Court of Appeals has determined that the rule announced in *Blakely* and *Booker* does not apply retroactively to matters on collateral review. See *Lenford Never Misses A Shot v. United States*, 2005 WL 1569403 (8th Cir. July 7, 2005); *Rodriguez v. United States*, Crim. No. 00-276 (JRT) (D. Minn. March 8, 2005). Accordingly, petitioner's motion for relief pursuant to § 2255 cannot be granted on the basis of *Blakely* and *Booker*.

ORDER

Based on the foregoing, and all of the records, files and proceedings herein, **IT IS HEREBY ORDERED** that Petitioner's Motion to Vacate under 28 U.S.C. § 2255 [Docket No. 58] is **DENIED**.

The Clerk of Court is respectfully directed to mail a copy of this Order to the petitioner.

DATED: September 8, 2005
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge

¹ The Court notes that, on August 28, 2004, petitioner moved the Eighth Circuit to recall its mandate based on *Blakely*. At this point, all opportunity for direct review of petitioner's sentence had passed, and the conviction and sentence were final. The court summarily denied petitioner's motion.